

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HENRY AND RUTH TREVOR |

For Appellants: Henry Trevor, in pro, per.

For Respondent: Burl D. Lack, Chief Counsel;
 Peter S. Pierson, Assistant Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Henry and Ruth Trevor against a proposed assessment of additional personal income tax in the amount of \$342.00 for the year 1959.

Appellants, who are residents of this state, reported a commission in the amount of \$7,461.75 as income on their California personal income tax return for the year 1955. In 1959, appellants learned that the 1955 commission should have been reported also to the State of Oregon. Accordingly, they filed an Oregon income tax return for 1955 and paid a tax of \$340.00 on April 24, 1959. On their California income tax return for 1959, which was filed on April 14, 1960, appellants credited the amount of the tax paid to Oregon against their California tax liability for the year 1959. The Franchise Tax Board disallowed this credit on January 25, 1962,

Section 18001 of the Revenue and Taxation Code allows a credit for a tax paid to another state on income which is also taxed by California. The applicable regulations permit the credit only against the California tax on income for the same year, in this case the year 1955. (Cal. Admin. Code, tit. 18, reg., 18001(a), subd. (3).) After April 15, 1960, the applicable statute of limitations (Rev. & Tax Code, Sec. 19053) barred appellants from any right to a refund of taxes paid for 1955.

Appellants' sole contention is that respondent was remiss in failing to notify them of the necessity of claiming a refund for the year 1955.

Appellants had approximately one year after the Oregon tax was paid within which to ascertain how the credit should be applied and to file a refund claim for 1955. There is no indication that respondent was aware or should have been aware of appellants' problem before they filed their 1959 tax return on April 14, 1960. Thus, respondent had but one day to examine the return and rectify appellants' error before the statute of limitations expired, Without implying that the statute could have been extended

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if the claim were barred because of negligence on the part of the Franchise Tax Board, we do not believe that the bar was due to unreasonable delay by that agency,

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Henry and Ruth Trevor against a proposed assessment of additional personal income tax in the amount of \$342.00 for the year 1959 be and the same is hereby sustained,

Done at Sacramento, California, this 7th day of January, 1964, by the State Board of Equalization.,

Paul R. Leake, Chairman

Geo. R. Reilly, Member

John W. Lynch, Member

Richard Nevins, Member

, Member

ATTEST: _____, Secretary
H. F. Freeman